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FILED

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SECRETARY, BOARD OF
OIL, GAS & MINING



BEFORE THE UTAH BOARD OF OIL, GAS AND MINING	
Utah Chapter of the Sierra Club et al., <i>Petitioners,</i>	Division of Oil, Gas and Mining's Motion for Leave to file Sur-reply
vs.	
Utah Division of Oil, Gas and Mining, <i>Respondent,</i>	Docket No. 2009-019 Cause No. C/025/005
and Alton Coal Development, LLC, <i>Respondent/Intervenor.</i>	

The Utah Division of Oil, Gas and Mining moves the Board of Oil, Gas and Mining, Board, for leave to file a sur-reply to Alton's Reply to the

Division's brief in response to Alton Coal Development's Opening Brief in Support of Fee Petition.

Alton Coal has filed as part of its Reply to the Division's Response to Alton Coal's Opening Brief in Support of Fee Petition, an attack on the Division for allegedly exceeding the Division's role to advise the Board in this matter, and for violating its obligation of candor with the Board. This serious, accusation deserves an opportunity for the Division to respond. The Division is entitled to demonstrate the error and falsity of these claims since these accusations are not a Reply to the arguments presented but collateral attacks raising issues and allegations that are new. The Division is entitled to provide a rebuttal and Board is entitled to hear the Division's position.

A proper Reply would have addressed the arguments and analysis presented by the Division's Response¹. That Response sought to demonstrate that Alton had not followed the Board's Order to brief the specific arguments presented by the Sierra Club and failed to show how each claim lacked factual or legal basis. The Division suggested that the Board could dismiss Alton's Petition for not satisfying its burden, but in the interest of not relying solely on that argument, chose to examine Sierra Club's claims. In doing so, the Division did not take sides and come to the defense of the Sierra Club in this fees dispute, but because Alton's Opening Brief failed to do so, and knowing the Board expected such an analysis, the Division undertook the effort of scrutinizing each of Sierra Club's original claims to determine if they lacked a factual or legal basis.

¹ To the extent that Alton's Reply does address the substance of the Division's analysis in its Response, Alton does little more than provide conclusory or sophomoric dismissals without analysis of the Division's arguments, or the underlying pleadings and facts.

The Division's analysis was critical of Alton's position that all seventeen claims, including many that were decided by deference to the Division's expertise or that had survived motions were frivolous. Nevertheless, in its examination of the issues, the Division strived to be thorough and to look at those claims through the eyes of a reasonable person, as the Board must do, not as an advocate. Advocacy by the Division, if any, was directed toward promoting a thorough and fair analysis in order to reach a final resolution of this overly protracted question².

The Division strongly disagrees with Alton's accusations of bias and lack of candor and believes that in fairness it should be allowed to file a brief response to Alton's unwarranted attacks.

Submitted on October 6, 2015.

UTAH ATTORNEY GENERAL'S OFFICE

A handwritten signature in blue ink, appearing to read "Steven F. Alder", is written over a horizontal line.

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² Although the request for a sur-reply does extend this unpleasant foray outside of the original Petition even further, the Division intends to be brief and will only address the attempts by Alton to discredit the Division's purposes and candor before the Board in this matter.

CERTIFICATE OF SERVICE

I certify that I delivered a copy of the Division of Oil, Gas and Mining's Motion to File Sur-Reply to the following parties by email on October 9, 2015:

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